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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,225	10/30/2003	Mary Elizabeth Davis	9396	9781

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EXAMINER

CHAPMAN, GINGER T

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/697,225	Applicant(s) DAVIS ET AL.	
	Examiner Ginger T. Chapman	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 and 13-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-30 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/23/2004; 11/22/2004; 02/25/2005; 06/06/2005</u> | 6) <input type="checkbox"/> Other _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group I, Species 2: article having at least one wetness sensation member integrated with the topsheet, in the reply filed on 16 November 2005 is acknowledged.

Claims 1-6 and 13-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 16 November 2005.

Claims 26-30 are cancelled as per Applicants' amendment filed on 16 November 2005.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The **abstract** should be in narrative form and generally limited to a single paragraph on a separate sheet **within the range of 50 to 150 words**. **It is important that the abstract not exceed 150 words in length** since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 102

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for

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patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Underhill et al (2003/0114821 A1) in view of Neading et al (2001/0049513 A1).

With respect to claim 7, as seen in Figure 4. Underhill et al discloses a disposable absorbent article (21) having a longitudinal axis, two laterally opposed article side edges extending between a laterally extending first waist end edge in a first waist region and a laterally extending second waist end edge in a second waist region, and a crotch region interposed therebetween (p. 1, [0008]; p. 3, [0037]), the disposable absorbent article (21) comprising: a

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backsheet (149); a topsheet (151) joined to the backsheet (149) and having a body-facing surface (fig. 2); an absorbent core (153) disposed intermediate the backsheet (149) and the topsheet (151); at least one wetness sensation member (167) integrated with the topsheet (151) such that a portion of the topsheet (151) covering a portion of the absorbent core (153) forms a permeable body-facing layer of the wetness sensation member (p. 7, [0068, 0071], the wetness sensation member (167) also including a flow control layer (181) disposed between the permeable body-facing layer and the absorbent core (p. 7, [0064]) in a face-to-face arrangement with the permeable body-facing layer and having two laterally opposed flow control layer side edges (p. 7 [0067], at least a portion of each of the two flow control layer side edges being disposed laterally inwardly of the article side edges (p. 7, [0067]); wherein urine deposited by the wearer onto the wetness sensation member can penetrate through the permeable body-facing layer in a z direction away from the wearer to the flow control layer and the flow control layer retards the passage of the urine through the wetness sensation member in the z direction and supports the movement of the urine in an x-y plane such that the wearer's awareness of urination is enhanced (p. 7, [0071; p. 1, [0003])).

Underhill et al do not disclose a visible highlighting. Neading et al teach a visible highlighting (14) indicating a presence of the wetness sensation member (16) in the disposable absorbent article and being visible at least when viewing the body-facing surface of the topsheet (p. 2, [0026, 0027]). Neading et al, at p. 1, [0005, 0010] expresses the desire and motivation for a wetness indicator to indicate a visible response in the presence of fluid thereby indicating that the diaper is wet. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the wetness sensation member of Underhill et al having

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visible highlighting as taught by Neading et al in order to provide a visible indicator of urine in the diaper since Neading et al state at page 2 [0026] that such visible highlighting provides an immediate indicator that the child has excreted waste and soiled the diaper.

Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Underhill in view of Neading and further in view of Roe et al (US 6,627,786).

With respect to claims 8-9, the combination of Underhill and Neading discloses the article having at least one wetness sensation member but does not disclose a plurality of the members spaced apart from one another by a spacing ranging from about 5 mm to about 15 mm. As seen in Figures 6a and 6b, Roe teaches the members (50a, 50b) spaced apart by a spacing ranging from about 5 mm to about 15 mm (col. 8, ll. 54-67 to col. 9, ll. 1-5). At column 1, lines 55-63 Roe expresses the desire and motivation for an article that can facilitate toilet training by enhancing a wearer's awareness that urination has occurred while at the same time preventing soiling or leakage. Roe teaches that the benefit of spacing the wetness sensation members is that the spacing allows enough liquid to pass through to the core to prevent flooding that can result in leakage of the article during urination while at the same time enable enough liquid to flow to the wetness sensation members to enhance the wearer's awareness that urination has occurred. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to space the wetness sensation members of Underhill and Neading by a spacing ranging from about 5 mm to 15 mm as taught by Roe et al, since Roe teaches at col. 8, ll. 39-42 that such a position enables the member to be wetted with urine and held in contact with the wearer's skin thereby enhancing the wearer's awareness that urination has occurred.

With respect to claims 10-12, the combination of Underhill and Neading discloses the article having wetness sensation members but does not expressly disclose the topsheet comprising Z-folds. As seen in Figures 7a and 7b, Roe et al teach the topsheet (24) comprising Z-folds (90a, 90b) spaced apart by a spacing ranging from about 50 mm to about 90 mm (col. 9, ll. 58-59) and comprising elastic members (92a, 92b) disposed along the two flow control layers of each of the wetness sensation members disposed within a respective one of the Z-folds (fig. 7b). Roe et al teach that the Z-folded configuration and the elastic elements maintain the wetness sensation member against the wearer's skin thereby enhancing the wearer's awareness that urination has occurred even when the diaper sags around the wearer. It would therefore have been obvious to one having ordinary skill in the art at the time the invention was made to form the topsheet of Underhill and Neading comprising Z-folds as taught by Roe in order to provide wetness sensation members held in contact with the wearer's skin thereby enhancing the wearer's awareness that urination has occurred.

Double Patenting

Claim 7 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 6-8 of copending Application No. 10/815,918. Although the conflicting claims are not identical, they are not patentably distinct from each other because all features of the instant invention are disclosed in the '918 claim.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kitaoka et al (US 5,342,343) discloses training pants (1) having a plurality of wetness sensation members (11, 11a) integrated with the topsheet (4).

Otsubo (US 6,169,225) discloses training pants (fig. 1) having wetness sensation members (2) with elastic members (18, 18) holding the wetness sensation member in contact with the wearer's skin.

La Wilhelm (US 6,075,178) discloses wetness sensation members integrated with the backsheet.

Todd et al (US 4,738,674) discloses visible highlighting for diapers and surgical dressings (col. 3, ll. 39-45).

Although these references are pertinent prior art, neither was used to reject any claims in the first office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 8:30 a.m. to 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ginger Chapman
Examiner, Art Unit 3761
01/04/06



TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

